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Annex A-7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH.

J A I P U R.

O.A. No. 38/93

Date of decision: 15/12/93

VIJAY KUMAR JUNEJA & ANR : Applicants.

O.A. No. 58/93

HIRA LAL MEHRA & ANR. : Applicants.

Respondents:
UNION OF INDIA & ORS

: Respondents.

Mr. J.K. Kaushik

: Counsel for the applicants.

Mr. U.D. Sharma

: Counsel for the respondents 1-3.

Mr. M.K. Shah

: Counsel for the respondents 4-5.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. P.P. Shrivastava, Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

In both these cases, the facts are similar and the question of law is identical, as such, both the cases are decided under the common judgment.

2. In OA No. 58/93, Hira Lal Mehra & Another Vs.

Union of India & Ors, the applicant was appointed on the post of Assistant Commisar on 26.1.80 in the office of Director, Census Operations, Jaipur. It was submitted that the respondents no. 4, Shri K.C. Gupta and respondent no.5, Shri Hasan Khan were appointed on adhoc basis on the basis of previous letter dated 30.10.1979 without taking into consideration the directions contained in the letter dated 9.2.80 (Annexure A-6) in March, 80. The respondents regularised the services of both the applicants vide Annexure A-5, dated 22.1.91. The services of respondents nos. 4 and 5 were regularised vide order dated 14.3.91 (Annexure A-8).

3. The respondents issued the seniority list (Annex A-2) and S/Shri Hasan Khan and K.C. Gupta, both have been shown as senior to the applicants and their names find place at serial nos. 1 and 2 of the seniority list. The applicants submitted that the Imputed policy dated 11.3.91 (Annex A-1)

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so far it provides for counting adhoc service of statistical assistant for the purpose of seniority and promotion may be declared unconstitutional. They have also prayed that the seniority list (Annexure A-2) may be modified. They have further submitted that the reversion order dated 31.12.92 (Annexure A-3) may be set aside. They have also prayed that any relief which may be granted may kindly be granted to them.

4. It will not be out of place to mention that on 11.3.91, the respondents declared the policy of regularisation of the employees who were appointed on adhoc basis as Statistical Assistants, Computers at the time of 1981 Census. Department of Personnel & Training took the decision vide Annexure A-1, dated 11.3.91 that the services may be regularised with effect from a prospective date, after screening on the basis of assessment of CRS. It has also been decided that these adhoc appointees in the grade of Statistical Assistants and Computers may be allowed to count their adhoc service in the respective grade for the purpose of seniority as well as eligibility for promotion to the higher grade. This part of the circular is under challenge and the applicant has requested that the respondents should not take into consideration the adhoc service for the purpose of promotion and seniority. The respondents submitted the reply and submitted that the services of applicants as well as the respondents nos. 4 & 5 have been regularised in accordance with the directions and the delay in the issuance of the order of regularisation in the case of respondents no. 4 and 5 will not take away the right accrued to them under Annexure A-1.

5. Mr. Kaushik has pointed out that in Annexure R-1, there were specified posts and there was a condition that the exemption granted will only be limited for a short period. His grievance is that the order of regularisation of the applicant was passed on 22.1.91 whereas the orders of regularisation of the respondents were passed vide Annexure

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A-8, dated 14.3.91. Thus, his clients become senior as the orders for regularisation were passed about two months earlier.

6. Mr. Kaushik has relied upon the case of State of Haryana & Others Vs. Piara Singh & Others, reported in 1992 SCC (L&S) 825. In para 25 of this case, observations have been made by the Hon'ble Supreme Court that the services of the adhoc employees can be regularised with prospective effect. In the case of Excise Commissioner, Karnataka & Anr. Vs. V. Sreekantha, reported in ATR 1993 (1) S.C. 751, Hon'ble Supreme Court was considering the cases of regularisation and recruitment to Class III post. Their Lordships, after considering the various aspects of the case held that the adhoc appointment was made possible because of the framing of the said Special Rules of Recruitment in 1970. Their Lordships held that in the facts and circumstances of the case, service rendered as adhoc employees cannot be considered for the purpose of seniority but the service should be considered only from the date of his subsequent appointment of regularisation under the said Special Rules of Recruitment in 1970.

7. In the case of Delhi Water Supply and Sewage Disposal Committee & Others Vs. Shri R.K. Kashyap & Ors, reported in 1988 (6) SLR 33, Hon'ble Supreme Court held that adhoc appointment promotion made after considering the claims of other eligible persons - Such adhoc appointment followed by regularisation of service - Such persons should get their service in the adhoc appointment for determining seniority in absence of any specific rule to the contrary. Their Lordships further held that period spent on adhoc appointment cannot be counted towards seniority if such adhoc appointments were made without considering the claims of eligible persons. Their Lordships were of the view that to give the benefit of such service to a favoured few would be contrary to the equality of opportunity enshrined in

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Article 14 and 16.

8. In the case of B. Nageswara Rao Vs. Chief Personnel Officer, South Central Railway, Secunderbad & Ors, reported in (1993) 23 ATC 873, Hon'ble Supreme Court held that benefit of adhoc service cannot be extended in favour of persons who were appointed on adhoc basis against the rules at the cost of directly recruited persons. However, there was no rule, as such. Their Lordships held that the applicant will rank senior to direct recruit because ~~maxxxx~~ ^{above} of any specific rule of seniority, criterion of length of service was to be followed.

9. In the case of H.L. Randev & Ors Vs. High Court of Punjab & Haryana & Others, reported in 1991 SCC (L&S) 731, the Hon'ble Supreme Court held that promotees became members of the service only on their appointment to the cadre posts after the amendments and their entitlement to the quota became due only thereafter. Hence, their seniority cannot be counted from any date anterior to such appointment.

10. In the case of G.P. Doval & Others Vs. Chief Secretary, Government of U.P. & Others, reported in 1984 (2) SLR 555, their Lordships held that there was no rule for ignoring the period rendered as officiating appointment for determining length of continuous officiation. Such period cannot be ignored in preparing provisional seniority list.

11. In the case of Union of India Vs. M.P. Singh, reported in 1991 SCC (L&S) 163, - length of service was counted for the purpose of seniority. In the case of Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra & Others, reported in 1990 SCC (L&S) 339, their Lordships held that where appointment made in accordance with rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. Their Lordships further held that where initial appointment is not made by following procedure laid down by the rules but the appointee continues in the post uninterruptedly till

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regularisation of his service in accordance with the rules, period of officiating service will be counted.

12. We have heard the rival contentions. We will have to take into consideration the important facts.

Admittedly, the respondents were appointed earlier in time and the applicants were appointed later in time at the time of their initial appointments. Appointments of respondents as well as applicants were on adhoc basis and even after the completion of the 1981 Census work, they were allowed to continue after 1982 against the directions issued by the Government. Both the respondents and the applicants continued in employment and their cases were referred to the Government for regularisation some time in 1984. The applicants were lucky that the regularisation orders were passed on 22.1.91 though they were appointed two months later than the respondents nos. 4 and 5. However, the orders for regularisation of the respondents were passed on 14.3.91, i.e. about two months later than the applicants. None of these cases, mentioned above, are directly applicable in the instant case. In the instant case, even if we accept the submissions of Mr. Kaushik, then the persons who were appointed earlier will have to be regularised after the screening first than the persons who were appointed later on adhoc basis. Thus, admittedly, the case of both the parties is that the respondents nos. 4 and 5 were appointed in 1980 prior to the appointments of the applicants. It is also not in dispute that the cases of the applicants as well as the respondents were referred for regularisation in 1984. It is also not in dispute that the applicants were regularised in January, 91 whereas the orders of respondents were passed in March, 91. Thus, there was no fault of the respondents and the papers remained pending with the Govt. It was the obligatory duty to consider and pass the necessary orders in favour of the persons who were appointed earlier

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in time on adhoc basis and not according to the rules. Both are sailing in the same boat and both want to get the advantage of regularisation. For the cases of regularisation, the persons who were appointed earlier will have a right to get the benefit of seniority though their orders of regularisation were passed two months later. They will have the right to count the length of service and we do not find any illegality in Annexure A-1. The directions are that the persons appointed earlier should be regularised first prospectively after screening. If any case has not been considered, all the persons who have been appointed earlier and the orders were passed subsequently, then first length of service will be considered for the purpose of seniority and there is no illegality in the order, Annexure A-1. So the respondents are senior to the applicants as they were appointed on 21.3.80 whereas the applicants were appointed on 26.4.80. Both were adhoc employees; both continued in employment for a long time on adhoc basis against the rules or against the circular. So, naturally, respondents nos. 4 and 5 will be senior as they were appointed earlier though their orders of regularisation were passed on 14.3.91 whereas the orders of regularisation of the applicants were passed in January, 91. The respondents have not committed any illegality in reverting the applicants vide Annexure A-3, dated 31.12.92 on the ground that they will have to give the appointment to the selected senior persons first, namely, respondents nos. 4 and 5.

13. In the result, we do not find any force in the O.A. and the same is dismissed, with no order as to costs.

(P.P. SHRIVASTAVA)
Administrative Member

(D.L. MEHTA)
Vice-Chairman

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16/1/93
Section Officer (Secretariat)
Central Administrative Tribunal
JAIPUR BENCH, JAIPUR